THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.26369 of 1999

Dated : 03.07.2007

Between:

Kooduri Srihari Rao S/o Veeraraghavaiah

..... PETITIONER

And:

The State of A.P., rep., by its Principal Secretary,
Revenue Department, Secretariat, Hyderabad and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.26369 of 1999

ORDER:

Petitioner claims to be the owner of an extent of Acs.4.04 guntas of land in Sy.No.347/A of Somavaram village of Nereducherla Mandal in Nalgonda District. The said land is adjacent to Peddacheruvu at Somvaram village, which was initially fed with rainwater, later was fed with water from Nagarjuna Sagar Left Canal. Even then also the petitioner stated to have cultivated his land after recession of water from his land. However, repairs were allegedly effected to weir of the tank, and therefore, petitioner could not cultivate his land. Aggrieved thereby, he approached the respondents to provide him relief, but in vain. Hence, he filed W.P.No.13069 of 1994, which was disposed of directing the respondents to find out whether the land of the petitioner was

submerged in the tank, and if so, to initiate land acquisition proceedings and pay compensation as per law. Complaining that no action has been taken pursuant to the orders in the writ petition, petitioner filed Contempt Case No.1009 of 1999. Meanwhile, the second respondent passed an order on 18.08.1999 stating that the land in question has been under submergence since a long time, and as such there is no possibility of new submergence and hence the petitioner is not entitled to any compensation. Therefore, petitioner sought to appoint a commission to enquire into the fact as to whether the land was submerged completely throughout the year due to feeding of the tank with left canal of Nagarjuna Sagar and raising of the weir. However, this Court directed the petitioner to question the order of the District Collector, dated 18.08.1999. Hence, this writ petition.

A detailed counter is filed by the second respondent. It is stated in the counter that Peddacheruvu tank was formed during Kakatiya Dynasty at the time of construction of Someswara Temple about 600 years ago and its original standards are maintained without any alterations. Hence, there is no question of the petitioner being affected. It is further stated that pursuant to the order of this Court in W.P.No.13069 of 1994, the Joint Collector inspected the land in question along with other officials, brother-in-law of the petitioner and other neighbouring land owners, which revealed that the land is under submergence at the time of full tank level, even prior to command of Nagarjuna Sagar canal during the year 1968, and the standards of the tank are not increased at any time and therefore, new submergence after command of Nagarjuna Sagar canal does not arise. Hence, it is concluded that the petitioner is not entitled to any compensation.

Heard the learned counsel for the petitioner and the learned Government Pleader for Land Acquisition.

The main contention of the learned counsel for the petitioner is that the land of the petitioner is in low level area and as and when there was

full water in the tank on account of rains and there is overflow of water from tank, there used to be submergence, which was only periodical, but was not total, and thus the petitioner was in a position to cultivate the land. He further contends that on account of Nagarjuna Sagar Canal Water being stored in the tank, always water in the tank is at full tank level and there is overflow and thus the land in question is in submergence continuously, and therefore, petitioner is entitled to compensation under the provisions of the Land Acquisition Act, 1894 (for short "the Act").

The learned Government Pleader opposed the said submission stating that Peddacheruvu tank was formed during the Kakatiya Dynasty at the time of construction of Someswar temple about 600 years back and the original standards of the tank are maintained without any alterations, but no subsequent constructions were made to the said tank, affecting the land of the petitioner, and as such the petitioner is not entitled to any compensation.

No doubt, in the earlier writ petition, being W.P.No.13069 of 1994, a learned Single Judge of this Court directed the respondents to find out whether the land of the petitioner comes under submergence of the tank and if it really comes, then the respondents shall initiate land acquisition proceedings and pay compensation to the petitioner in accordance with law. Pursuant to the said orders, the Joint Collector, Executive Engineer (IB) Nalgonda, Revenue Divisional Officer, Miryalaguda, Mandal Revenue Officer Neredcherla and Assistant Engineer (I.B), Neredcherla inspected the land of the petitioner. As per the inspection, the land of the petitioner is under submergence, even prior to command of Nagarjuna Sagar canal during the year 1968, and the water has been at full tank level and the standards of the tank are not increased at any time and therefore, new submergence after command of Nagarjuna Sagar canal does not arise. The said report, in my considered view, is not at all helpful to come to the conclusion as to whether the contentions put forth by the learned counsel for the petitioner are correct or not. Hence,

a direction is issued to the Joint Collector, Nalgonda, to again inspect the land in question and find out as to what was the original position and also to note as to whether the water from Nagarjuna Sagar Canal is really entering into Peddacheruvu tank, on account of which there is overflow of water, resulting submergence of petitioner's land. If ultimately it is found that there is overflow of water and the land of the petitioner is submerged, the respondents are hereby directed to initiate land acquisition proceedings and pay compensation to the petitioner, as provided for under the Act.

With the above observation, the writ petition is disposed of. It is needless to say that the Joint Collector shall issue notice to the petitioner directing him to appear at the time of inspection. The said exercise shall be completed within a period of eight weeks (8) from the date of receipt of a copy of this order.

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sh 03.07.2007